

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
David A. Latham, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Year 1973. :

State of New York  
County of Albany

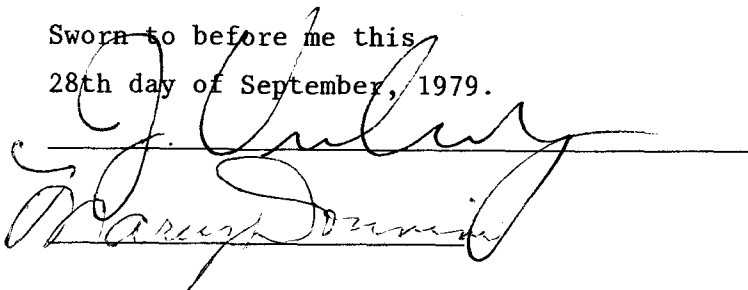
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon David A. Latham, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David A. Latham, Jr.  
10 Park Ave.  
Derry, NH 03038

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of September, 1979.



The block contains two handwritten signatures. The top signature is in cursive and appears to be the signature of the notary public. The bottom signature is also in cursive and appears to be the signature of David A. Latham, Jr. Both signatures are written over a horizontal line.

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

David A. Latham, Jr.  
10 Park Ave.  
Derry, NH 03038

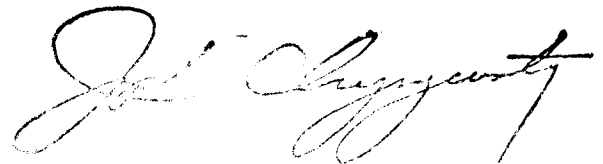
Dear Mr. Latham:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

DAVID A. LATHAM, JR. :

DECISION

for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1973. :

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Petitioner, David A. Latham, Jr., 10 Park Avenue, Derry, New Hampshire 03038, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 15139).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 19, 1978 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether the rental of real property by petitioner during 1973 constituted an activity which was engaged in for profit, thus permitting him to properly deduct the rental loss which was sustained therefrom.

FINDINGS OF FACT

1. Petitioner, David A. Latham, Jr., timely filed a New York State personal income tax return for 1973, on which he reported a rental loss of \$2,269.23.

2. The Income Tax Bureau issued a Statement of Audit Changes, on which it contended that petitioner did not purchase the real property in question for the primary purpose of engaging in rental activity for profit. It disallowed all expenses connected with the property, except for the allowable investors' expenses which consisted of interest expense and real estate taxes. Accordingly, on May 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1973 in the amount of \$108.45 in personal income tax, plus \$17.14 in interest, for a total due of \$125.59.

3. The property in question was a five bedroom, beach-front house which was sixty years old, situated on four house lots in Kennebunk, Maine. It was unheated, uninsulated and unsuitable for winter habitation. It had been used by the previous owner for summer vacations. Petitioner purchased a one-half interest in the property on March 6, 1972. His father, who owned six other rental properties, purchased the other one-half interest. Petitioner contended that he purchased the property for the purpose of converting it to rental property and then of selling it at a profit in the future. To this date, petitioner still owns and rents the property.

4. The rental season was for approximately ten weeks of the year. In 1972 the property was rented for one-half the season, during which time the need for improvements, repairs and decoration was ascertained. During the year at issue, the "start up" expenses were large enough to result in a rental loss. The property showed a rental profit for the years after 1975, after all initial expenses and repairs were performed.

5. During the year at issue, petitioner was employed and lived in the Buffalo, New York, area. He spent several days in June preparing the house for occupancy. At the end of the season, he spent several days closing and preparing the house for the winter. During the rental season, he visited the property once to mow the grass. In winter he would visit the property after

a storm to take care of any damage which may have occurred. Tenants' complaints were forwarded to his father, who lived 75 miles from the property and who arranged for repairs. Petitioner's mother kept the books and records for the property, as well as for his father's other properties. Neither petitioner nor his father ever occupied the property themselves.

6. Petitioner was audited by the Internal Revenue Service for 1974. He testified that his rental activities were examined and that the expenses were allowed because it was found that the property was held for business purposes.

CONCLUSIONS OF LAW

A. That the rental of real property by petitioner, David A. Latham, Jr., during 1973 constituted an activity engaged in by him for profit, and that the rental loss sustained therefrom was properly deductible on his personal income tax return for said year, in accordance with section 162 of the Internal Revenue Code.

B. That the petition of David A. Latham, Jr. is granted and the Notice of Deficiency issued on May 24, 1976 is cancelled.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER